ATTORNEY FOR APPELLANT:

KURT A. YOUNG
Nashville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BRIAN K. BARRICK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0610-CR-599
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49F09-0607-FD-134650

May 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Brian K. Barrick pleaded guilty to Resisting Law Enforcement,[1] as a class D felony, and was sentenced to two years in prison. On appeal, he challenges the appropriateness of his sentence.

We affirm.

On the evening of July 21, 2006, Barrick ran a red light and caused a multi-vehicle accident. Barrick then fled the scene. Soon thereafter, Officer Daniel Bain observed Barrick traveling in his heavily damaged vehicle at a high rate of speed. Officer Bain activated the emergency lights of his police vehicle and pursued Barrick, who accelerated and turned onto a one-way street heading the wrong way. Barrick then stopped his car and fled on foot through a neighborhood. Officer Bain gave chase and ordered Barrick to stop, as Barrick began to climb a six-foot privacy fence. Barrick was able to escape for a period of time, because Officer Bain fell and injured his ankle. Officer Bain called for the assistance of a canine unit and a police helicopter to locate Barrick, who was eventually discovered lying in a small area between a garage and fence. He expressly refused to come out when ordered to do so by police, so the canine was sent in to pull him out. Barrick allegedly struck the dog about the head and body and attempted the choke the dog as it made the apprehension.

On July 25, 2006, the State charged Barrick with four counts: 1) class D felony resisting law enforcement; 2) class D felony resisting law enforcement; 3) class A misdemeanor striking a law enforcement animal; and 4) class C misdemeanor failure to

---

[1] Ind. Code Ann. § 35-44-3-3 (West, PREMISE through 2006 2nd Regular Sess.).

stop after accident resulting in property damage. On September 7, 2006, Barrick negotiated a plea agreement with the State, where he agreed to plead guilty to Count 1 and the State agreed to dismiss the remaining charges. The plea agreement also provided that the executed sentence would be capped at 730 days. The trial court accepted the proposed plea agreement.

At the sentencing hearing on September 21, 2006, the trial court sentenced Barrick to 730 days in prison. The court acknowledged the existence of the mitigating circumstances proffered by Barrick, specifically Barrick's substance abuse problem and acceptance of responsibility through his guilty plea. The court noted, however, that Barrick had not taken advantage of past opportunities for substance abuse treatment. In aggravation, the trial court detailed Barrick's extensive criminal history (four prior felony and seven misdemeanor convictions). The court also noted Barrick had probation revoked in two prior cases. After finding that the aggravating circumstances outweighed the mitigating circumstances, the court urged Barrick to seek treatment and explained in part:

> [T]he Court is giving you the two (2) years [sic] sentence, not because you are a bad person, but because you keep getting these driving offenses in which you run the risk of killing other people out there. [What] I am trying to do more than anything is to take you off the streets to dry you out as much as I can.

Transcript at 22. Barrick now appeals his sentence as inappropriate.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*,

840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*.

On appeal, Barrick argues that his enhanced sentence[2] is inappropriate. In this regard, he claims the trial court failed to consider the undue hardship to his minor child because the voluntary child support he had been paying would not be forthcoming while he was incarcerated. He also asserts for the first time on appeal that imprisonment would place an undue hardship on him because, due to his broken arm, he would be at an increased risk of abuse from other inmates. Finally, Barrick notes that he lost a son in 2002, which contributed to his alcohol abuse. He claims he recognizes his problem now and is committed to seeking treatment, and, therefore, "it appears that his character and attitudes indicate that he is unlikely to commit another crime." *Appellant's Brief* at 4.

We initially observe that Barrick specifically proffered only two mitigating circumstances below, his substance abuse problem and his guilty plea. The trial court considered both of these as mitigating circumstances. Barrick may not now assert additional mitigators on appeal. *See Johnson v. State*, 837 N.E.2d 209 (Ind. Ct. App. 2005) (defendant who fails to raise proposed mitigators below is precluded from advancing them for the first time on appeal), *trans. denied*.

---

[2] Ind. Code Ann. § 35-50-2-7(a) (West, PREMISE through 2006 2nd Regular Sess.) provides in relevant part: "A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years." Here, Barrick was sentenced to two years in prison, which is slightly above the advisory sentence.

Waiver notwithstanding, we find Barrick's hardship arguments unavailing. With respect to the alleged undue hardship to his child, we note his son was sixteen years old at the time and lived in Ohio with the son's mother. At the sentencing hearing, Barrick testified he voluntarily paid child support of $100 per week "when I've working [sic]." *Transcript* at 17. The record, however, reveals Barrick had worked only five months over the last two years and had not held a full-time job since 2005. Further, on July 26, 2006, Barrick indicated to the court that he was unemployed and that he did not pay child support. In light of the record, we do not find that Barrick's self-serving testimony established his sentence would present an undue hardship to his son. Furthermore, Barrick has wholly failed to establish how imprisonment with a broken arm creates an undue hardship on him or amounts to a significant mitigating circumstance. There is nothing in the record to support this assertion, and we further note that Barrick specifically requested that the trial court place him in prison rather than in Community Corrections on work release.

Barrick further argues "his character and attitudes indicate that he is unlikely to commit another crime." *Appellant's Brief* at 8. We cannot agree. While he asserts that the death of his other son in 2002 contributed to his alcohol abuse, we observe that Barrick's substance abuse and criminal behavior began well before 2002. In fact, his criminal history is extensive and spans over twenty years. He has had previous opportunities to address his substance abuse issues, but has failed to do so. Further, he has previously been granted the grace of probation, which was revoked on at least two occasions with the most recent revocation in November 2005. Thereafter, Barrick was

released from prison on April 20, 2006, only to commit the instant offense three months later. Unfortunately, under the circumstances, we do not find it unlikely Barrick will reoffend and, contrary to his assertions on appeal, there is no clear indication in the record that he is or has ever been committed to seeking treatment.

We reject Barrick's invitation to revise his sentence to the minimum sentence of six months in prison. Rather, we find the two-year sentence imposed by the trial court appropriate in light of the nature of the offense and, particularly, his character.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.